



STAFF REPORT

Regular Agenda

To: Gallatin County Commission

From: Amy Waring, Code Compliance Specialist

Subject: Malpeli / Wortman Appeal of March 16, 2007 Decision on a Community Decay Complaint on Robbins / Larrabaster property in Big Sky, MT

Hearing Date: April 24, 2007

Location: Community Room
311 W. Main Street, Bozeman, MT

BACKGROUND

Violet Robbins and Vianna Robbins Larrabaster own a one-acre parcel located on the east side of U.S. Highway 191 near the intersection with Highway 64 in Big Sky, MT. The parcel is described as Tract 2, Southeast ¼, Southeast ¼, Section 32, Township 6 South, Range 4 East. A trailer, owned by Frank Larrabaster has been located on the property for over twenty years. The trailer is uninhabited, and is in a dilapidated condition (collapsed roof, no door, etc.).

I received a community decay complaint from Faith Malpeli in October 2006, and from Jerry and Linda Wortman on March 9, 2007. I inspected the property on March 9, 2007 from U.S. Highway 191. On March 16, 2007, I issued a decision that the trailer does not rise to the level of community decay, as regulated in Gallatin County Ordinance #2004-017 (Community Decay Ordinance).

On March 23, 2007, Ms. Malpeli and Mr. and Mrs. Wortman appealed my March 16, 2007 decision.

STAFF FINDINGS

1. The Gallatin County Commission adopted Ordinance #2004-017 to control community decay on September 7, 2004. **See Exhibit 1.** Ordinance 2004-017 replaced Ordinance #93- 01, which was the previous community decay ordinance.
2. Community Decay is defined as “a public nuisance created by allowing rubble, debris, junk or refuse to *accumulate* resulting in conditions that are injurious to health, indecent, offensive to the senses or which obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property” (Section 1, Ordinance 2004-017).
3. Pursuant to Section 3 of Ordinance 2004-017, it is a violation to own or maintain any public nuisance that results in community decay visible from a public roadway. No person shall accumulate rubble, debris, or refuse that, upon investigation, is deemed to be a public nuisance.

Material that may constitute community decay includes, but is not limited to, bricks, concrete, wood, cardboard, paper, pallets, tires, dead animals/animal parts, dirt, demolition waste, junk vehicles, wrecked trailers, iron, metal, machine parts, appliances, and barrels.

4. Ordinance #2004-017 prohibits the accumulation of community decay that is visible from a public road, and requires an alleged violator to either clean up the site, or shield the community decay from view. The material being shielded may not present a threat to public health and safety (Section 4).
5. I inspected the Robbins / Larrabaster property on March 9, 2007 from U.S. Highway 191. The trailer is partially shielded by a hill. I could see the open doorway on the trailer from U.S. Hwy 191 when I was standing near the lights and the junction with Hwy 64 (looking north). I could not see the collapsed roof from the road. I had permission to enter the neighbor's property, and observed the collapsed roof from the hill on the Wortman's property. Looking directly at the trailer from US Hwy 191, I could not see any signs of decay; all I saw was an older trailer. I did not observe any other material on the property that would constitute community decay. Inspection notes and photos are included as **Exhibit 2**.
6. Pursuant to Section 1 of the Community Decay Ordinance, community decay must include an *accumulation* of rubble, debris, junk or refuse that is a public nuisance. Pursuant to Section 3 of the Community Decay Ordinance, it is a violation to own or maintain any public nuisance that results in community decay visible from a *public roadway*, as defined by Montana Code Annotated, Section 60-1-103(22). Therefore, rubble, debris, junk and refuse visible only from private property *does not* qualify as community decay.
7. As stated in No. 5 above, all I witnessed from a public road was an older trailer with an open doorway. The trailer was partially shielded by a hill. Since the Community Decay Ordinance requires an *accumulation* of rubble, debris, junk or refuse visible from a public road, I determined that the site does not rise to the level of community decay, as regulated in Ordinance #2004-017. I issued this decision on March 16, 2007. See **Exhibit 3**.
8. The appellants, Malpeli and Wortman allege that the Larrabaster trailer is community decay because material that may constitute community decay includes wrecked trailers, and that the trailer is injurious to health because of its hazardous condition. Appellants maintain that the site receives exposure to the public, who has always used this property to fish and recreate along the Gallatin River. They allege that the collapsed roof, lack of doors and broken windows in the trailer could lead to the total collapse of the trailer while recreationists, their children, pets, or visiting wildlife are exploring this trailer. The property is listed for sale, causing even more people to enter the property and trailer. Their appeals are included as **Exhibit 4**.
9. The Community Decay Ordinance does not regulate trespassing on private property.
10. Although the Community Decay Ordinance may include wrecked trailers as a component of community decay, one trailer, in and of itself, does not constitute community decay. There

must be an accumulation of rubble, debris, junk or refuse, and it must be visible from a public roadway. The Robbins/Larrabaster site does not meet these conditions.

11. Appellants also argue that the trailer is not grandfathered as a residence under the Gallatin Canyon / Big Sky (GC/BS) Zoning Regulation because the trailer does not have power, water, and sanitary facilities. The GC/BS Zoning Regulation was adopted in 1996. The trailer was placed on the property prior to adoption of zoning. Therefore, Section 43 (Non-conforming lots, uses and structures) of the Zoning Regulation applies to this structure. The zoning regulation is inadequate to address the concerns of the appellants.
12. According to the Gallatin County Treasurer's Office, delinquent taxes on the trailer amount to \$30.00 for the year 2006. In a March 13, 2007 phone conversation, the County Treasurer, Kim Buchanan, indicated a letter would be sent to the owner as part of the office's normal standard practice.

STAFF SUGGESTED ACTION

The County Commission, after hearing and considering all public testimony, must determine if a community decay violation exists, and affirm, withdraw, or modify the March 16, 2007 decision of the Code Compliance Specialist.

ATTACHMENTS:

- Exhibit 1: Community Decay Ordinance #2004-017
- Exhibit 2: March 9, 2007 Inspection Notes & Photos
- Exhibit 3: March 16, 2007 decision
- Exhibit 4: Malpeli / Wortman appeal letters